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INDEPENDENT OFFICE OF ADVOCACY ACT OF 2001

MARCH 21, 2001.—Ordered to be printed

Mr. BOND, from the Committee on Small Business,
submitted the following

REPORT

[To accompany S. 395]

The Committee on Small Business, to which was referred the bill (S. 395) to ensure independent and nonpartisan operation of the Office of Advocacy of the Small Business Administration, having considered the same, the Committee reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

I. NEED FOR LEGISLATION

The Office of Advocacy (Office) is a unique office within the Federal government. It is part of the Small business Administration (SBA/Agency), and its director, the Chief Counsel for Advocacy, is nominated by the President and confirmed by the Senate. At the same time, the Office is also intended to be the independent voice for small business within the Federal government. It is supposed to develop proposals for changing government policies to help small businesses and to represent the views and interests of small businesses before other Federal agencies.

The General Accounting Office (GAO) published a report in 1999 on personnel practices at the SBA (GAO/GGD-99-68). The GAO reported that Assistant and Regional Advocates hired by the Office of Advocacy share many of the attributes of Schedule C political appointees. During the period covered by the report, Regional Advocates, who are senior staff in the Office of Advocacy, were frequently cleared by the White House personnel office, which is the same procedure followed for approving Schedule C and non-career SES political appointees. The report raises questions, concerns and suspicions regarding the independence of the Office of Advocacy. Consequently, Chairman Bond introduced the bill to establish a

sufficiently independent Chief Counsel who would not be obligated to comply with the political demands of the Administration. Further, the legislation, as approved by the Committee, is written, in part, to address issues raised by the GAO.

The Independent Office of Advocacy Act of 2001 responds to these concerns and is designed to build a firewall to prevent the political intrusion into the day-to-day management of the Office of Advocacy. The bill requires that the SBA's budget include a separate account for the Office of Advocacy. No longer would the Office's funds come from the general operating account of the Agency. The separate account would also provide for the number of full-time employees who would work within the Office of Advocacy. No longer would the Chief Counsel for Advocacy have to seek approval from the SBA Administrator to hire staff for the Office of Advocacy.

The bill does not alter the 25-year-old statute that permits the Chief Counsel to hire individuals critical to the mission of the Office of Advocacy without going through the normal competitive procedures directed by Federal law and the Office of Personnel Management (OPM) (15 U.S.C. 634d). The special hiring authority, which is limited only to employees within the Office of Advocacy, is beneficial because it allows the Chief Counsel to hire quickly those persons who can best assist the Office in responding to changing issues and problems confronting small businesses. An early draft of S. 395 included a restatement of the special hiring authority provided under existing law to the Chief Counsel. Although the restatement of existing law was dropped from the bill at the insistence of the Senator Thompson, Chairman of the Committee on Governmental Affairs, the statutory authority for the Chief Counsel to hire staff under 15 U.S.C. 634d has not been modified or rescinded in any way in S. 395 as approved by the Committee on Small Business.

As the director of the Office of Advocacy, the Chief Counsel for Advocacy has a dual responsibility. On the one hand, this individual is the independent watchdog for small business. On the other hand, he or she is also a part of the President's Administration. These two roles are sometimes very difficult roles to play simultaneously.

The Independent Office of Advocacy Act is designed to make the Office of Advocacy and the Chief Counsel for Advocacy a fully independent advocate within the Executive Branch acting on behalf of the small business community. The bill would establish a clear mandate that the Office of Advocacy will continue to work on behalf of small businesses regardless of the position taken on critical issues by the President and the Administration.

The Office of Advocacy, as envisioned by the Independent Office of Advocacy Act of 2001, will be unique within the Executive Branch. The Chief Counsel for Advocacy will be a wide-ranging advocate, who will be free to advocate change in government programs and attitudes as they effect small businesses.

In 1976, Congress established the Office of Advocacy in the SBA to be the eyes, ears and voice for small business within the Federal government. Over time, it has been assumed that the Office of Advocacy is the "independent" voice for small business. While the Committee believes that the Office of Advocacy and the Chief Counsel should be independent and free to continue to advocate or

support positions that might be contrary to the Administration's policies, it has become apparent that greater independence for the Office would improve its ability to advocate on behalf of small businesses.

For example, funding for the Office of Advocacy comes from the Salaries and Expense Account of the SBA's budget. Staffing is allocated by the SBA Administrator to the Office of Advocacy from the overall staff allocation for the Agency. In 1990, there were 70 full-time employees working on behalf of small businesses in the Office of Advocacy. The FY 2001 allocation of staff is 51, but in recent years the Office has not been fully staffed as the result of the hiring freeze imposed by the SBA Administrator three years ago. The independence of the Office is diminished when the Office of Advocacy staff is reduced to allow for increased staffing for new programs and additional initiatives in other areas of the SBA, at the discretion of the Administrator.

II. DESCRIPTION OF THE BILL

The Independent Office of Advocacy Act of 2001 provides for an effective, independent advocate for small business within the Federal government that is not restricted by the views or policies of the Small Business Administration (SBA/Agency) or any other agency. The Act is designed to make the Office of Advocacy and the Chief Counsel for Advocacy a full independent advocate within the Executive Branch acting on behalf of the small business community.

Under this bill, the Office of Advocacy will be unique within the Executive Branch. The Chief Counsel for Advocacy will be a wide-ranging advocate, who will be free to take positions contrary to the Administration's policies and to advocate change in government programs and attitudes as they impact small business.

The Act establishes for the first time in the Small Business Act that the Office of Advocacy has the statutory independence and adequate financial resources to be an advocate for the small business community. In addition to the statement of the Office's independence, the bill provides for a separate authorization to fund the Office of Advocacy. As designed in this bill, its annual budget would be a separate account in the SBA budget, similar to the separate accounts for the Office of Inspector General and the Business Loans Program. The Act further directs the SBA to provide appropriate and adequate office space at the SBA headquarters and its field office locations, together with equipment, office supplies, and communications facilities and services as are necessary to support the requirements of the Office of Advocacy.

Each appropriation request submitted by the Administration to the Congress would also provide for the number of full-time employees who would work within the Office of Advocacy. The Chief Counsel for Advocacy would not need the approval of the SBA Administrator to hire staff. As stated earlier in this report, the bill does not alter the practice set forth in existing law that allows the Chief Counsel to hire individuals critical to the mission of the Office of Advocacy without going through the normal competitive procedures directed by federal law and the OPM. Without regard for the civil service laws and regulations, the Chief Counsel may hire and terminate those individuals who are considered necessary to

carry out the duties of the Office. This existing law is intended to include the regular staff of the Office of Advocacy and such consultants and experts on a temporary or intermittent basis that the Chief Counsel deems necessary. The special hiring authority rests solely with the Chief Counsel. It is the Committee's intention that the authority of the Chief Counsel to hire staff, consultants and experts would be limited only by the amounts appropriated annually by the Congress, without further review or approval needed from the Administration..

Section 4 of the Independent Office of Advocacy Act of 2001 sets forth in detail the functions of the Office of Advocacy as intended by the Congress. The Chief Counsel will head up the Office of Advocacy. The Chief Counsel will be appointed by the President from civilian life with the advice and consent of the Senate without regard to the person's political affiliation. To be eligible for the position, the nominee cannot have served in any position at the SBA during the five years preceding appointment.

Because of the independent nature of the office, the committee established the office in such a manner so that the incumbent Chief Counsel would not feel that his or her job were in jeopardy by taking a position critical of or in opposition to an Administration initiative. To strengthen this position, the bill provides that the President must notify the Congress 30 days in advance before removing the Chief Counsel from office, except in cases of misconduct, neglect of duty, malfeasance, or if there is reasonable cause to believe that the Chief Counsel has committed a crime for which a sentence of imprisonment can be imposed. This provision does not restrict the President's removal authority; simply, it is intended to give Congress advance notice that the Chief Counsel is being removed.

Section 4 sets forth the primary functions of the Office of Advocacy, which the Committee views as wide-ranging and comprehensive insofar as are the needs and problems confronting small businesses nationwide. In setting forth the responsibilities of the Office of Advocacy, the Committee intends for the Office to serve as focal point to receive complaints, criticisms and suggestions concerning the policies and programs of the Federal government that affect small businesses. Additionally, the Committee believes that women-owned businesses and minority-owned businesses play an equally important role in our economy. Therefore, the bill adds women-owned business concerns to the primary function of the Office of Advocacy.

The bill requires and authorizes the Chief Counsel to submit certain reports to the President and the Congress, including an annual report on the Regulatory Flexibility Act. The Committee believes strongly that these reports should not be subject to the mandatory review and editing that has historically been required by past and current Administrations. In August 1999, when this legislation was first approved unanimously by the full Senate, the bill was amended at the request of Senator Thompson to insure that the other Congressional Committees with a specific interest in the Regulatory Flexibility Act receive the annual reports, including the Senate Committee on Governmental Affairs, the House Government Reform Committee and the Senate and House Judiciary Committees. This change has been included in S. 395. In order for the

Committees on Small Business of the Senate and House of Representatives to carry out their responsibilities on behalf of the small business community, it is important that they receive regular reports from the Chief Counsel that have not been submitted to the OMB or any other Federal department or agency for editing and/or approval.

An early version of S. 395 restated the existing law, which directs each Federal agency to provide the Chief Counsel with all information that the Chief Counsel believes is necessary to carrying out the responsibilities of the Office of Advocacy (15 U.S.C. 634e). At the insistence of the Senate Committee on Armed Service, the reference to this provision was dropped from the bill. The Committee believes that this authority is very important, and the fact that this provision is not restated in S. 395 as approved by the Committee should in no way be interpreted as a modification or rescission of existing law.

The bill authorizes such sums as are necessary for carrying out the responsibilities of the Office of Advocacy. The amounts appropriated should remain available until spent and should not be limited to fiscal year limitations. This subsection is intended to give the Chief Counsel the flexibility to respond to matters that come before the Office of Advocacy without the pressures of obligating funds, perhaps prematurely, prior to the end of a fiscal year.

If, at the time of enactment, there is a sitting Chief Counsel for Advocacy who was reviewed and approved by the Committee and the full Senate, it is the intention of the Committee that the incumbent will continue to serve subject to the requirements of this bill once enacted.

III. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following vote on S. 395 was recorded on February 28, 2001. A motion by Senator Kerry to adopt the Independent Office of Advocacy Act was approved by a unanimous recorded vote, with the following Senators voting in the affirmative: Bond, Kerry, Burns, Bennett, Snowe, Enzi, Fitzgerald, Crapo, Allen, Ensign, Levin, Harkin, Lieberman, Wellstone, Cleland, Landrieu, Edwards, and Cantwell.

IV. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 7, 2001.

Hon. CHRISTOPHER S. BOND,
Chairman, Committee on Small Business,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 395, the Independent Office of Advocacy Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 395—Independent Office of Advocacy Act of 2001

S. 395 would authorize the appropriation of such sums as necessary for the Office of Advocacy within the Small Business Administration (SBA). In addition, the bill would clarify the office's role and would codify requirements for reports to the Congress on issues affecting small businesses.

Based on information from the SBA, CBO estimates that the office will spend about \$4 million in 2001. Assuming appropriations of the necessary amounts, we estimate that SBA would spend about \$5 million a year over the 2002–2006 period to implement S. 395. The increase in estimated costs would primarily cover anticipated inflation.

S. 395 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 395 contains no inter-governmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact is Ken Johnson. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact of the personal privacy of companies or individuals who utilize the assistance authorized by this legislation.

VI. CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirement of rule XXVI(12) of the Standing Rules of the Senate in order to expedite the business of the Senate.

VII. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The Act is titled the "Independent Office of Advocacy Act of 2001."

Section 2. Findings

This section describes the need for an effective, independent advocate for small business within the Federal government that is not restricted by the views or policies of the Small Business Administration (SBA/Agency) or any other agency. This section also sets forth the important role the Office of Advocacy plays in providing

research, information and its expertise on small business matters to the Congress and the Executive Branch.

Section 3. Purposes

This section states that the purpose of the Act is to ensure that the Office of Advocacy has the statutory independence and adequate financial resources to be an advocate for small business. The Office of Advocacy is directed to keep the Senate and House Small Business Committees and the SBA Administrator informed on matters of importance to small businesses.

Subsection (3) provides that there will be a separate authorization for the Office of Advocacy.

Subsection (4) states that the Office of Advocacy will continue to monitor Agency compliance with the Regulatory Flexibility Act and will report annually to the Congress. Subsection 5 states that the purpose of the Act is to enhance the role of the Office of Advocacy in the panel review process.

Section 4. Office of Advocacy

Section 4 amends Title II of Public Law 94-305 (15 U.S.C. 634a et seq.) describing the Office of Advocacy.

Section 202 of Title II defines specific terms including "Chief Counsel" and "Office."

Section 203 of Title II establishes within SBA the Office of Advocacy and designates the Chief Counsel for Advocacy to manage the Office. This section sets forth that the Chief Counsel shall be nominated by the President, who shall give the Congress 30 days notice should he decide to remove the Chief Counsel, except in cases of misconduct, neglect of duty, malfeasance, or if there is reasonable cause to believe that the Chief counsel has committed a crime for which a sentence of imprisonment can be imposed. Section 203 also requires the SBA to submit a separate budget request each year for the Office of Advocacy.

Subsection (c) of Section 203 sets forth the following primary functions for the Office of Advocacy:

- (1) Examine the role played by small business within the U.S. economy;
- (2) Examine the effectiveness of Federal subsidy and assistance programs;
- (3) Measure the direct costs of regulation on small business concerns;
- (4) Determine the impact of the U.S. tax system on small business concerns;
- (5) Study the ability of the private sector to meet the credit needs of small business and determine the impact of government demands for credit on small business concerns;
- (6) Determine the availability of credit and management assistance to small business concerns;
- (7) Evaluate the efforts of Federal agencies and the private sector to help minority-owned and women-owned small business concerns;
- (8) make recommendations to help in the development and strengthening of minority- and women-owned small business concerns;

(9) Make recommendations to help small business expand to their full potential and to assess any common reasons for businesses success and failures;

(10) Develop a set of criteria to be used to define small businesses;

(11) Make recommendations on issues and regulations affecting small business concerns; and

(12) Evaluate the efforts of each Federal agency and of private industry to assist small business concerns owned and controlled by veterans and service-disabled veterans.

Subsection (d) of Section 203 also describes the following additional functions of the Office of Advocacy:

(1) Serve as a focal point for receipt of complaints, criticisms and suggestions concerning the policies and programs of the Federal government that affect small business concerns;

(2) Counsel small business concerns on how to resolve their difficulties with the Federal government;

(3) Develop proposals to improve the policies and activities of Federal agencies so that they can better assist small business concerns;

(4) Represent the interests and views of small business concerns before other Federal agencies;

(5) Encourage both private and public entities to disseminate information about services and programs for small business concerns; and

(6) Carry out its responsibilities under the Regulatory Flexibility Act.

Subsection (e) of Section 203 directs the SBA to provide the Office of Advocacy with adequate office space in the headquarters and field offices. The SBA shall also provide equipment, office supplies, and communications facilities and services as are necessary.

Section 206 of Title II directs the Chief Counsel to submit an annual report on Agency compliance with the requirements of the Regulatory Flexibility Act to the Senate and House Committees on Small Business, the Senate Committee on Governmental Affairs, the House Committee on Government Reform and the Senate and House Committees on the Judiciary. Further, the Chief Counsel is authorized to prepare and submit to the President and Congress such reports as he or she deems necessary. In no case shall a report from the Office of Advocacy be submitted in advance to OMB for approval or Administration clearance.

Section 207 of Title II authorizes such sums as are necessary to be appropriated for the Office of Advocacy.

A new Subsection (d) has been added to Section 207 to permit the incumbent Chief Counsel for Advocacy, if one exists at the time of enactment, to continue to serve in that position after the date of enactment of this Act in accordance with the requirements of Title II.